

**IN THE DRAWINGS:**

The attached sheet of drawing includes changes to Fig. 8. This sheet, which includes Fig. 8, replaces the original sheet including Fig. 8.

## **REMARKS**

### **I. STATUS OF THE CLAIMS**

Claims 1 to 18 were presented for examination. This amendment amends claims 1, 3 to 5, 8, 10, 11, 14, 17, and 18, and cancels claims 2, 6, 7, 9, 12, 13, 15, and 16.

In view of the above, it is respectfully submitted that claims 1, 3 to 5, 8, 10, 11, 14, 17, and 18 are currently pending.

### **II. OBJECTION TO DRAWINGS**

The Examiner has objected to the drawings on the basis that Fig. 8 contains an arrow that should not be present and an indirect arrow that should be direct and unbroken. New Fig. 8 is provided to amend these arrows based on the Examiner's comments.

### **III. OBJECTION TO SPECIFICATION**

The Examiner has objected to the specification because of the informalities listed on page 2 of the Office Action. The specification has been amended to comply with the Examiner's request.

### **IV. REJECTION OF CLAIMS 1, 4, 5, 8, 10, 11, 15, AND 17 UNDER 35 U.S.C. § 102(b) AS BEING ANTICIPATED BY GOLD ET AL. (U.S. PATENT NO. 6,785,786)**

The Examiner has rejected claims 1, 4, 5, 8, 10, 11, 15, and 17 under 35 U.S.C. § 102(b) as being anticipated by Gold et al. (U.S. Patent No. 6,785,786).

Independent claim 1 has been amended to recite the features of dependent claim 2 and to clarify the language in the original claims 1 and 2. Independent claims 8 and 10 have been similarly amended to recite the features of claim 9. Claim 11 has been also similarly amended to recite the features of dependent claims 12, 13, 15, and 16. The remaining claims 4, 5, and 17 depend from claim 1 or 11 and add further features thereto and the other remaining claim 15 has been cancelled.

With respect to the features of claims 2, 9, 12, 13, 15, and 16 that have been clarified and added to the independent claims 1, 8, 10, and 11, the Examiner relies on combinations of Gold et al., Ramberg et al. (U.S. Patent Application Publication No. 2002/0000464) and Leung et al. (U.S. Patent Application No. 2003/0046270) to reject claim 2, 9, 12, 13, 15, and 16. Applicant respectfully submits that the invention claimed in the independent claims 1, 8, 10, and 11 as amended are not anticipated by and are patentable over any combination of these cited references for the following reasons.

Independent claim 1 as amended relates to a "data backup device connected to a server via a network, comprising: a storage unit that stores data; a usable band detector that detects a width of a usable band from an available band of the network, the usable band currently not being used; a backup controller that determines whether the width of the usable band is wider than a predetermined width, and ***transmits the data to the server through the network to store the data as backup data in the server*** when the usable band is determined to be wider than the predetermined width; a data identifying unit that identifies a type of data selected from a plurality of types for each of the data stored in the storage unit, wherein ***the backup controller specifies the type of each of the data identified when transmitting each of the data to the server***, and a data restoring unit." This data restoring unit "receives a request from a user, ***determines a type of backup data to be obtained from the backup data stored in the server according to the type***, based on the request, the type of backup data being one of the types, ***requests the server to transmit the backup data of the type determined, receives the backup data of the type transmitted from the server***, and restores to the storage unit the backup data of the type received (***emphasis added***)."

With respect to dependent claim 2, the Examiner asserts that the data identifying unit determines a type of backup data to be obtained from the backup data stored in the server according to the type and cites Ramberg et al., paragraph 0050 as reciting that the intelligent data routing mechanism determines data types (page 10, lines 15 to 17 of the Office Action). The Examiner acknowledges that Gold et al. does not teach and asserts that Leung et al. does teach wherein the backup controller specifies the type of each of the data identified when transmitting each of the data to the server and cites Leung et al., page 1, paragraph 0012 as reciting that the invention determines storage locations based upon characteristics of the data to be stored (page 10, last four lines of the Office Action). Applicant respectfully disagrees with the Examiner's assertion.

On one hand, Ramberg et al., in paragraph 0050, disclose that the "intelligent data routing mechanism receives data from multiple ADC (automatic data collection) devices, analyzes the data from each ADC device to determine its type, and then routes the data from each ADC device to an appropriate destination based on the data type." However, Ramberg et al. at least fail to teach or suggest a data restoring unit that "***determines a type of backup data to be obtained from the backup data stored in the server according to the type***, based on the request, the type of backup data being one of the types, ***requests the server to transmit the backup data of the type determined, receives the backup data of the type transmitted from the server***, and restores to the storage unit the backup data of the type received (***emphasis added***)."

In fact, the intelligent data routing mechanism disclosed by Ramberg et al. functions more like a routing

server, and Ramberg et al. do not disclose determining a type of backup data to be obtained from any backup data ***stored in a server*** or any mechanism other than the intelligent data routing mechanism. Therefore, Ramberg et al. and the other cited references do not teach or suggest a data restoring unit that "**determines a type of backup data to be obtained from the backup data stored in the server according to the type**, based on the request, the type of backup data being one of the types, **requests the server to transmit the backup data of the type determined, receives the backup data of the type transmitted from the server**, and restores to the storage unit the backup data of the type received (***emphasis added***)."

On the other hand, Leung et al., in paragraph 0012, discloses that "the storage locations are determined based upon characteristics associated with the data to be stored, based upon characteristics of the storage devices, and based upon storage policies configured for the storage environment." That is, Leung merely teaches that the data are stored in different storage devices and ***not in a server***. Therefore, Leung et al. and the other cited references do not teach or suggest a backup controller that "**transmits the data to the server through the network to store the data as backup data in the server** (***emphasis added***)" and "**specifies the type of each of the data identified when transmitting each of the data to the server** (***emphasis added***)". Therefore, Leung et al. and the other cited references do not teach or suggest this feature.

For the above reasons, the cited references do not teach or suggest all the limitations of independent claim 1 as amended. As a result, independent claim 1 as amended cannot be obvious to a person having ordinary skill in the art and is thus patentable over the prior art.

The subject matter of independent claims 8, 10, and 11 as amended correspond to independent claim 1 as amended and relate to a data backup method, a computer readable recording medium that stores a computer program including computer executable instructions which when executed by a computer, cause the computer to perform the data backup method, or a data backup system respectively. Therefore, these independent claims 8, 10, and 11 are patentable over any combination of the cited references for the similar features recited therein and the reasons explained above with respect to independent claim 1 as amended.

Claims 4, 5, and 17 depend from independent claim 1 or 11. Thus, these claims are also patentably distinguishable over the cited art.

In view of the above, it is respectfully submitted that the rejection is overcome.

**V. REJECTION OF CLAIM 2 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. IN VIEW OF RAMBERG ET AL. (U.S. PATENT APPLICATION PUBLICATION NO. 2002/0000464) AND LEUNG ET AL. (U.S. PATENT APPLICATION PUBLICATION NO. 2003/0046270)**

As claim 2 has been cancelled, the rejection is moot as to that claim.

**VI. REJECTION OF CLAIM 3 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL., RAMBERG ET AL. AND LEUNG ET AL. IN VIEW OF CHEN (U.S. PATENT APPLICATION PUBLICATION NO. 2005/0010913) AND VALIN ET AL. (U.S. PATENT NO. 7,272,133)**

Claim 3 depends from claim 1, and Chen and Valin et al. both fail to cure the above deficiencies in Gold et al., Ramberg et al., and Leung et al. Thus, this claim is also patentably distinguishable over the cited art.

In view of the above, it is respectfully submitted that the rejection is overcome.

**VII. REJECTION OF CLAIM 6 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. IN VIEW OF NAKANISHI ET AL. (U.S. PATENT APPLICATION PUBLICATION NO. 2003/0229653)**

As claim 6 has been cancelled without prejudice or disclaimer, the rejection is moot as to that claim.

**VIII. REJECTION OF CLAIM 7 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. AND NAKANISHI, IN VIEW OF RAMBERG ET AL.**

As claim 7 has been cancelled without prejudice or disclaimer, the rejection is moot as to that claim.

**IX. REJECTION OF CLAIMS 9, 12, and 13 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. IN VIEW OF RAMBERG ET AL.**

As claims 9, 12, and 13 have been cancelled, the rejection is moot as to those claims.

**X. REJECTION OF CLAIM 14 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. AND RAMBERG ET AL., IN VIEW OF CHEN AND VALIN ET AL.**

Claim 14 depends from claim 11, and Chen and Valin et al. both fail to cure the above deficiencies in Gold et al., Ramberg et al., and Leung et al. Thus, this claim is also patentably distinguishable over the cited art.

In view of the above, it is respectfully submitted that the rejection is overcome.

**XI. REJECTION OF CLAIM 16 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL. AND RAMBERG ET AL., IN VIEW OF LEUNG ET AL.**

As claim 16 has been cancelled without prejudice or disclaimer, the rejection is moot as to that claim.

**XII. REJECTION OF CLAIM 18 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER GOLD ET AL., IN VIEW OF POWERQUEST (NON-PATENT LITERATURE FROM POWERQUEST) AND NAKANISHI ET AL.**

Claim 18 depends from claim 11, and PowerQuest and Nakanishi et al. both fail to cure the above deficiencies in Gold et al., Ramberg et al., and Leung et al. Thus, this claim is also patentably distinguishable over the cited art.

In view of the above, it is respectfully submitted that the rejection is overcome.

**XIII. CONCLUSION**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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